

**Submission
No 59**

INQUIRY INTO CORONIAL JURISDICTION IN NEW SOUTH WALES

Organisation: New South Wales Jewish Board of Deputies Ltd

Date Received: 14 March 2022



ABN 26 635 942 255

NEW SOUTH WALES JEWISH BOARD OF DEPUTIES LTD

The Representative Voice of NSW Jewry

ועד הקהילה היהודית בנ. ס.ו.

President: Lesli Berger
Chief Executive Officer: Darren Bark



14 March 2022

Ms Tina Higgins

Director Committees

Select Committee on the Coronial Jurisdiction in New South Wales

Parliament of New South Wales

coronial.jurisdiction@parliament.nsw.gov.au

Re: Inquiry into the coronial jurisdiction in New South Wales

The NSW Jewish Board of Deputies (JBD) is the official elected representative peak body of the Jewish Community in New South Wales, with 56 major communal organisations as its constituents. It is recognised by the NSW State Government, its agencies, the media and other ethnic and religious groups as the representative body of the Jewish Community and speaks on its behalf on all matters affecting the status, welfare and interests of New South Wales Jewry.

Thank you for the opportunity to make a submission to the Inquiry into the coronial jurisdiction in New South Wales. Our submission focuses on the coronial court's ability to respond to the needs of culturally and linguistically diverse communities such as the Jewish community (ToR 1(a)(v)); and the operational arrangements in support of the Coroner's Court with the NSW Police Force and Ministry of Health (ToR 1(a)(vi)).

This submission incorporates contributions from the Sydney Chevra Kadisha (SCK) – the sole provider of Jewish funerals to our community, and Rabbi Dr Benjamin Elton, Chief Minister of The Great Synagogue, Sydney. It also includes examples of best practices from relevant overseas jurisdictions where possible (ToR 1(b)).

The coronial system and bereaved families are a perennial concern for Jewish families.

Delays to burial and autopsies cause considerable distress to bereaved Jewish families. This is because Jewish religious law requires particular preparation of a body for burial, an expedient burial, and the presence and prayers of a Jewish person with the body between death and burial.

Jewish law also mandates that the body of a Jew be protected after death from desecration, wilful and otherwise, until the burial takes place. Given this, the actions of a coroner can have a significant impact on a Jewish family's ability to undertake a funeral consistent with their religious practices and beliefs.

While the State Coroner generally accommodates the requirements of the Jewish community when dealing with a death, there is no systematic requirement or guidance for a coroner to observe religious practice where possible in regard to a death. We consider that the coronial system can do more to alleviate the distress of families by ensuring it is faith



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sensitive. We suggest that the inquiry recommends that coroners accommodate religious practice where possible.

Ensuring more faith sensitive coronial practice for the Jewish community can be achieved by:

- 1) Avoiding unnecessary invasive post-mortem examinations where alternatives exist;
- 2) Prioritising the expedient release of Jewish bodies for burial; and
- 3) Implementing a faith identification system to enable early identification of Jewish deceased persons for prompt notification to the Sydney Chevra Kadisha.

The need for each of these practices is detailed below.

1. Avoiding invasive post-mortem examinations

The Jewish tradition places a high value on respecting a human corpse. It once carried a soul, and in itself is, in some sense, a reflection of the Divine. Therefore, any incomplete burial, or the disfiguring of a corpse is forbidden. Jewish law mandates that a body be protected after death from desecration, wilful or otherwise, until the burial takes place.

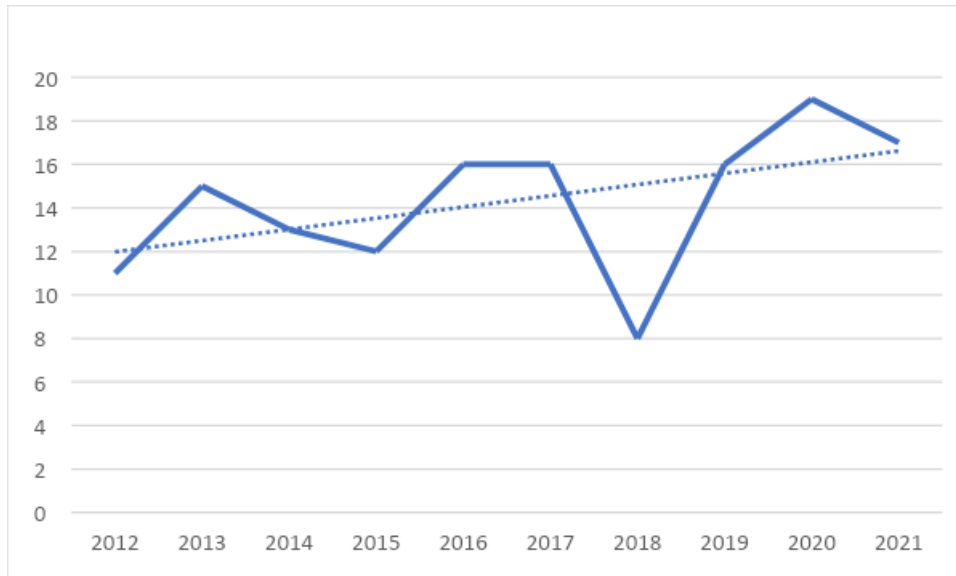
Consequently, objection is regularly taken by Jewish families to full or invasive post-mortem examinations. In contrast, consent is regularly given to conduct a limited non-invasive post-mortem examination, including external examination, the taking of bodily fluids and samples from the surface of the body, Computer Tomography (CT scan), Magnetic Resonance Imaging (MRI), ultrasound and Xray. We recommend that limited non-invasive methods of post-mortem examination be undertaken (such as scans) instead of invasive post-mortem examinations to ensure religious practice can be observed. We understand that there are emergency and extenuating circumstances where an invasive post-mortem is required, but that should not be the norm, as a matter of respect for the Jewish (and Muslim) faith.

As Jewish Law also places the highest premium on saving lives, there are also cases in which an autopsy is permitted, or even required, namely when a specific life may be saved as a direct result of the autopsy. Even in such cases, intervention should be minimised, performed as soon as possible, involve no permanent loss of material and in consultation with a rabbinic expert.

2. Prioritising the expedient release of Jewish bodies for burial

Jewish religious law mandates that the body of a deceased Jew be prepared for burial in accordance with Jewish law, and that the burial take place as soon as possible following death, and that a Jewish person sit with the body and pray between death and burial.

The number of Jewish bodies referred to the Coroner is increasing and therefore the expedient release of Jewish bodies is an ever-increasing important issue for the Jewish Community. See chart below which includes an interpolated trendline.



The Table below details the shortest and longest release period for a Jewish body that our community has experienced. The Table demonstrates that there is a wide variation and range in the period of time that a body is released which is of concern to the Jewish Community. One particular extreme example we are aware of occurred in December 2015 there was an unusual instance of a destitute burial, and it took 363 days for the body to be handed over for Jewish burial. This is an extreme outlier and has been left out of the table below. However, it demonstrates how identification of faith needs to be prioritised.

Year	Shortest release period (days)	Longest release period (days)
2012	1	16
2013	1	11
2014	2	5
2015	2	8
2016	1	15
2017	1	73
2018	2	21
2019	2	16
2020	1	20
2021	2	15

While we recognise that there may be some circumstances where a body needs to be held for more than a day, we ask that this be minimised by the allocation of sufficient resources to the Coroner to establish and implement a priority system that respects the Jewish (and Muslim) need for prompt burial.

In order to meet the requirements of both Jewish laws, and the needs of the NSW coronial system, the SCK has created a form families can complete and submit to the coroner for non-invasive post-mortem and request priority release (*Attachment A*). Our impression is

that the lodgement of this form has contributed in many but not all instances to the speedy recovery of Jewish bodies for burial, while still respecting Jewish and NSW law.

3. Implementing a faith identification system to identify Jewish deceased persons

Early faith identification of a body can help expedite the release of Jewish bodies. All efforts should be made to ensure the identification of the deceased be made as soon as possible. This is an issue of concern not only to the Jewish community due to religious laws but would also apply to the Muslim community.

We understand that identification may not always be possible, but in some instances the identification of a body may be made easier by items of clothing the deceased is brought in with, tattoos (sadly Holocaust survivors were often tattooed with death camp numbers by the Nazis, which is particularly relevant to our community as following the Holocaust, Australia took in the highest number of Holocaust survivors per capita outside of Israel) jewellery including Jewish symbols, or other identifying features.

We recommend that coroners implement a system that ensures the early faith identification of a body so release of the body can be prioritised for release in accordance with religious practices.

Recent UK Inquiries

We would urge you to consider the recent UK inquiries into coronial practice as part of your inquiry.

The Board of Deputies of British Jews has been involved and made submissions to recent UK inquiries into the Coroner System. These include:

- The House of Commons Select Committee [Inquiry](#) into the Coroner System, 8 July 2020 with final [report](#) released 26 May 2021.
- Coroner accountability reform, April 2018
- The [All-Party Parliamentary Group for](#) funerals and bereavement inquiry into delays between death and the burial or cremation of the deceased.

The Board of Deputies of British Jews made a number of proposals for coroners to better assist Jewish families. In particular, the provision of an information paper to coroners and those working with coroners explaining the importance of Jewish bereavement processes and how a coroner can be sensitive to these processes may be of assistance and we provide a sample at Attachment B). We recommend that the NSW Coroner also be provided with this information (amended for the NSW context) we would welcome the opportunity to provide personal briefings to assist. We consider that this process could help the NSW Coroner meet its obligations under the *Multicultural NSW Act 2000* No 77 Part 1 Section 3 1(d) which “requires all individuals and institutions should respect and make provision for the culture, language and religion of others within an Australian legal and institutional framework where English is the common language.”

Recommendations

The JBD submits that in order to mitigate these challenges the committee should recommend:



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1. Regulations or binding arrangements:

- 1.1. to ensure that prompt identification of Jewish bodies is made by the Coroner's staff or Ministry of Health officers, by reference to the individual's name, religious items (such as a skull cap), jewellery (such as a Star of David, menorah or "chai" symbol), any World War II identifying tattoo or any other identifying features.
- 1.2. to ensure that, once so identified, the name and location of any deceased Jew are immediately made known to the Sydney Chevra Kadisha and the body is released as soon as possible by the Coroner, so that the Sydney Chevra Kadisha may take possession of the body as soon as possible after its release by the Coroner.
- 1.3. to prohibit full or invasive post-mortem examination upon any Jewish person unless absolutely necessary and, in the latter case, only following a non-invasive post-mortem examination, consultation through the Sydney Chevra Kadisha with rabbinic authorities and face to face discussion with the family of the deceased person. There can be explicit allowance to the effect that limited non-invasive post-mortem examination, including external examination, the taking of bodily fluids and samples from the surface of the body, computer tomography or CT scan, magnetic resonance imaging or MRI, ultrasound and Xray are permitted in respect of Jewish bodies; and

2. Allocation of sufficient resources to the Coroner to establish and implement a priority system that respects the Jewish (and Muslim) need for prompt burial.

We thank the Select Committee on the Coronial Jurisdiction in New South Wales for the opportunity to make a submission in relation to this important issue. We would welcome the opportunity to attend a hearing and or to provide specialist advice on this sensitive matter.

Yours faithfully

Lesli Berger
President

Darren Bark
Chief Executive Officer



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Attachment A – Sydney Chevra Kadisha request form for non-invasive post-mortem and priority release



ב"ה

OBJECTION TO POST-MORTEM DIRECTIONS AND REQUEST FOR PRIORITY RELEASE

To: **NSW State Coroner**

Email (send to both emails below):

lidcombe_coroners@justice.nsw.gov.au

nswpath-fassdofmsydnmortuary@health.nsw.gov.au

Fax: (02) 9563-9299

Ph: (02) 9563-9000

Re: **The late** _____

Dear Coroner

Jewish law mandates that the body of a deceased Jew is: (1) prepared for burial according to Jewish law as soon as possible following death; and (2) protected from desecration, wilful or not, until burial. The Sydney Chevra Kadisha is the organisation responsible for ensuring that these mandates are adhered to.

Accordingly, on behalf of the *senior next of kin* of the above-named deceased (as defined in s6A of the Coroners Act, 2009), objection is hereby taken to a Full Post Mortem Examination being conducted upon the grounds that it is contrary to the Jewish faith, to which the deceased professed.

However, in order to expedite the release, as required by the Jewish faith, approval is provided to conduct a limited non-invasive Post-Mortem Examination upon the body of the above-named deceased, including External Examination and Scans/X-rays.

Permission is also granted to take blood tests when the Coroner deems it absolutely necessary.

Authorised Senior Next-of-Kin:

First Name: _____ Surname: _____

Relationship to deceased: _____

Address: _____

Contact Number(s): _____

Signed: _____ Date: _____

NOT-FOR-PROFIT
172 OXFORD STREET, WOOLLAHRA, NSW 2025 | P.O. BOX 2240, BONDI JUNCTION, NSW 1355
T (02) 9363 2248 F (02) 93273889 info@sck.org.au www.sck.org.au
ABN: 65 000 029 541



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Attachment B - Information Note for Arranging a Jewish Burial

Jewish tradition requires that burial should take place as soon as possible after death, preferably within 24 hours. Funerals do not take place on Shabbat or Festivals, but should take place as soon as possible afterwards.

The bereaved family should be given the opportunity to discuss their wishes with their individual synagogue or burial society as soon as possible after death.

The Sydney Chevra Kadisha (SCK), founded in 1817, is the communal burial society responsible for adhering to and complying with these legal mandates. It takes possession of all deceased Jewish bodies and carries out all Jewish burials in NSW. SCK will have a combination of employees and volunteers, both men and women, whose role is to ensure that the body of the deceased is shown proper respect, and the correct rituals are followed. Burial society members, Rabbis and congregational leaders will give guidance and advice where it is required, and in particular about how to comply with the differing requirements of Jewish and New South Wales law.

The key steps in the process of arranging a burial are:

1. Contact the SCK immediately. The SCK will be able to advise you about the documents that you will require in order for them to collect the body and prepare it for burial.
2. During the period between death and completion of the administrative paperwork leading to removal of the body there is a tradition amongst some Jews that the body should not be left alone. Members of the family, of the community and/or of the burial society may choose to do this. They will often read psalms while doing so.
3. Once you have registered the death and have the documents from the Registry Office, contact the SCK again and they will advise you about the next steps.
4. Provisional funeral arrangements will often have been made before the paperwork has been completed. These will need to be confirmed and relatives and friends notified when the details have been finalised.
5. If the burial is taking place under the auspices of a synagogue it is advisable to be in contact with the Rabbi of the community during this period.
6. The official mourners are the spouse, children, siblings, and parents. Immediately after burial the traditional seven-day mourning period (known as "shiva") commences. There may be variable degrees of observance of shiva. If the custom of holding prayer services at home is to be followed, then low chairs for the mourners and prayer books will be required, and this also needs to be discussed with the Rabbi and/or the SCK in advance of burial.